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Report of the Working Group on the Universal Periodic Review*

Jamaica

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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1. On 13th May, 2015, Jamaica presented its second cycle report to the 22nd Session of the Working Group on the Universal Periodic Review (UPR). During the interactive dialogue, 168 recommendations were made (as reflected in document A/HRC/30/15). The majority of these recommendations were accepted by the Government of Jamaica, including some which the Government regarded as having been already implemented or in the process of being implemented. Many of these recommendations were overlapping and, therefore, related responses are repeated as and when necessary.

2. The following represents Jamaica's final response to the 168 recommendations received, including those that the Government had declared would have required further consideration before the formal adoption of the UPR report by the 30th Session of the Human Rights Council. Jamaica has accepted 92 recommendations in whole and 2 recommendations in part, including 67 that the Government considers as having already been implemented or as being in the process of implementation.

I. Scope of international obligations

3. Jamaica accepts recommendations 118.1, 120.16 and 120.17.

4. Jamaica accepts recommendations 119.1, 119.2, 119.3, 120.9, 120.14 and 120.15, which are in the process of being implemented.

5. Jamaica notes:

- Recommendation 120.18. As stated previously, Jamaica is in the process of ratifying the ***Rome Statute of the ICC*** keeping with our normal practice of honouring commitments to international treaties, Jamaica intends to implement the Treaty in line with the commitments in the Statute. In the case of the ICC, however, this undertaking does not require the Government to enact legislation to incorporate the entire Treaty into domestic law;

- Recommendations 121.13, 121.14 and 121.15. In keeping with standard practice and obligations under the Vienna Convention on the Law of Treaties, the Government is in the process of putting in place, the relevant domestic measures that can give effect to the implementation of the ***Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women***.

6. Jamaica does not accept:

- Recommendations 120.1 to 120.5, the first half of recommendation 120.6, recommendations 120.7, 120.8, 120.10 to 120.12, 121.12, 121.16, 121.17 and 121.18. Jamaica is still in the process of putting in place the relevant domestic legislation that can give effect to the implementation of the ***Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment***. Acts of torture have never been condoned or accepted as a practice in Jamaica; as has been reflected in relevant treaty body reports, the Constitution and laws of Jamaica have always prohibited practices that would be tantamount to acts of torture. Furthermore, significant progress is being made in addressing many of the recommendations made by the Special Rapporteur on Torture in his report of the visit to Jamaica in 2012, regarding, among other things, conditions in places of detention;

- The second half of recommendation 120.6. ***Corporal punishment*** has been abolished in early childhood institutions, children's homes and other arranged alternate living spaces such as Foster Care. Appropriate measures are being taken

to ensure that the use of corporal punishment is discontinued in Jamaican schools. The *Child Care and Protection Act* affords protection for all children from abuse;

- Recommendations 120.13, 120.19, 121.1 to 121.11 and 121.19.

II. Institutional and human rights infrastructure and policy measures

7. Jamaica accepts:

- Recommendations 118.2 to 118.8.

8. Jamaica accepts as having already been implemented:

- Recommendations 119.5 and 119.6;

9. Jamaica accepts as being in the process of implementation:

- Recommendations 119.4, 119.7 to 119.14;

10. Jamaica does not accept:

- Recommendation 121.20; as there is no basis for stating that human rights defenders are at risk in Jamaica. Full protection is afforded to them as citizens under the law. They are extremely active, openly and boldly engaged in advocacy, and have contributed positively to the development of the Jamaican human rights architecture.

III. Cooperation with human rights mechanisms

11. Jamaica accepts recommendation 119.15, which is in the process of being implemented.

IV. Cooperation with treaty bodies

12. Jamaica accepts recommendation 119.16, which is in the process of being implemented.

V. Cooperation with special procedures

13. Jamaica does not accept recommendations 121.21, 121.22 and 121.23; as although the Government is not opposed to accommodating visits of Special Rapporteurs; these are considered on a case-by-case basis. It is critically important that the Government should be given adequate notice to ensure that necessary arrangements are in place for successful visits, in accordance with mutually-agreed timelines.

14. Jamaica recommends to the Human Rights Council that a mechanism be put in place that allows for sharing of information among the various Human Rights bodies and procedures, as often there are overlapping requests which are inefficient and unduly stretch the limited resources of the Jamaican State.

VI. Equality and non-discrimination

15. Jamaica accepts:

- Recommendations 118.9, 118.10 and 118.11.

16. Jamaica accepts, as having already been implemented or as being in the process of implementation:

- Recommendations 119.17, 119.20 and 119.21;
- Recommendations 119.18, 119.19 and the first part of 120.20 regarding discrimination against women and children. The Government of Jamaica condemns all forms of discrimination and negative stereotypes affecting women and children, and is pursuing appropriate policies to eliminate same. A gender equality framework is currently in place for the Government's policies, programmes, and plans, in keeping with the international legal requirements, international human rights obligations, commitments, and principles. In this context the Government of Jamaica is undertaking the following measures:
    - acceleration of legal and constitutional reform to protect against sex discrimination; sexual harassment;
    - legal reform the review and amend legislation geared towards greater legal protection for women and girls;
    - ongoing legislative reform relating to women to ensure that women receive adequate redress under the law; and
    - the introduction of new legislation to provide protection and remedies for women and girls.

17. Jamaica is a State Party to the Convention on the Rights of Persons with Disabilities (2007); Convention on the Elimination of All Forms of Discrimination (CEDAW, 1984); Convention on the Rights of the Child (1991); Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women - Belem do Para Convention (1994), and fully supports the Beijing Platform for Action (BPFA, 1995); Millennium Development Goals (MDGs, 2000); and agreed Outcome Documents of international and regional meetings on gender equality.

18. Details of some relevant domestic legislation are outlined below:

(a) The Charter of Fundamental Rights and Freedoms 2011

- Explicitly prohibits gender discrimination. Section 13 (3) (i) (i) provides for the right to freedom from discrimination on the grounds of being male or female.

(b) The Sexual Offences Act, 2011

- Repeals the Incest (Punishment) Act and Sections 44-67 of the (OAPA) which deal with offences against females;
- Strengthening and defining the offence of rape;
- Creates other sexual offences such as grievous sexual assault and marital rape;
- Defines a child as a person under the age of eighteen (18) years of age;
- Provides for the establishment of a Sex Offender Registry to house a database among other matters.

(c) The Child Care and Protection Act, 2004

- Covers issues affecting children directly as victims, or indirectly (or potentially) as children in need of care and protection;

- Addresses cases of child abuse;
- Makes provision for mandatory reporting;
- Creation of a Children's Advocate and the establishment of a Children's Registry.

(d) The Domestic Violence Act, 1995 (Amendment) 2004

- Provides for enhanced protection for victims of domestic violence and abuse;
- Applies to both spouses and *de facto* (common law) spouses;
- Makes provision for persons in visiting relationships;
- Allows for Occupation and Ancillary Orders, giving the victim exclusive use of a home, furnishings and personal effects;
- Allows Courts to issue Protection Orders, keeping the accused away from the home, work or school of the victim;
- Protection Orders can be made on behalf of men, women or children affected by violence within the home.

(e) The Offences against the Person Act, 2010

- Primary source of sexual offence prohibitions and penalties in Jamaican law;
- Highly gender-specific approach to sexual offences;
- Includes a range of offences related to issues of sexual morality and the exploitation or defilement of women or children, e.g. procuring a girl to be engaged in prostitution, other unlawful sexual activities or coerced sex, living on the proceeds of prostitution, soliciting for immoral purposes, causing a child to live in a brothel, having sexual intercourse with a woman who is overpowered by a drug or with a mentally disabled female.

(f) The National Disabilities Act, 2014

- Promotes full and equal enjoyment by persons with disabilities, of privileges, interests, benefits and treatment, on equal basis as others;
- Establishes the Jamaica Council for Persons with Disabilities;
- Addresses employment of persons with disabilities and includes non-discrimination provisions and an obligation on the employer to make adjustments to the workplace to ensure that the employee is not at a disadvantage;

19. Jamaica accepts, as having already been implemented or as being in the process of implementation:

- Recommendation 120.21. Pursuant to the *Legal Aid Act*, legal aid is available to both men and women and access to legal services is provided through the Legal Aid Council. Legal aid is offered to persons facing criminal charges, not to victims.

20. Legal aid services in non-criminal matters, such as to assist in family court proceedings, are primarily provided by the legal aid clinics in Kingston and Montego Bay as well as the Norman Manley Law School at the University of the West Indies in Kingston.

21. A number of other civil society organizations that operate independently provide legal advice and legal aid in civil and criminal matters, including those related to sexual and gender-based violence.

22. *Woman Inc.* is one of the leading women's NGOs in Jamaica and the only organisation that specifically provides legal aid services to women who use its services.

23. Legal pro bono services are offered by some NGOs, such as the *Independent Jamaican Council for Human Rights* and private attorneys.

24. Jamaica notes:

- The second half of recommendation 120.20. The Constitution and laws of Jamaica have always prohibited practices that would be tantamount to acts of torture, which have never been condoned or accepted as a practice in Jamaica. Furthermore, significant progress is being made in addressing many of the recommendations made by the Special Rapporteur on Torture in his report of the visit to Jamaica in 2012, regarding, *inter alia*, conditions in places of detention;
- Recommendations 121.25 and 121.26. Jamaica accepts these recommendations in principle, but considers that the existing, anti-discrimination legislation, other measures and legislative amendments are collectively adequate and effective to combat discrimination against women.

25. Jamaica does not accept:

- Recommendations 121.24 and 121.27 to 121.41. Jamaica has an agglomeration of legislation, policies, strategies and measures in place at various levels which derive from the Constitution and which, collectively, form an effective machinery that provides all Jamaicans redress from discrimination of any kind; it is unnecessary to create a single anti-discrimination law. It is not accurate to typify the attitudes of Jamaican society generally as "homophobic prejudices". Jamaica is committed to taking steps to end prejudice and stigmatisation affecting all Jamaicans, including LGBTI persons, emphasising mutual respect among all Jamaicans, adherence to the rule of law and continuing in a strong historical tradition of freedom of expression. The Government of Jamaica has consistently condemned all acts of violence, against all persons. As part of its approach to the decades-old problem of violence that has spared no community, or group of persons; the Government has been a leading voice in the Caribbean region, advocating for a regional, hemispheric and global response to the epidemic of violent behaviour that has affected Jamaica and other countries in the Americas. Jamaica is confident that the nation will build on recent modest successes in arresting violent behaviour among State actors and citizens alike, in order to reduce this trend in the society and among future generations.

VII. Right to life, liberty and security of the person

26. Jamaica accepts:

- Recommendations 118.12 to 118.23 and the first half of recommendation 120.22 relating to the implementation of the National Strategic Plan to Eliminate Gender-based Violence.

27. Jamaica accepts, as having already been implemented:

- Recommendations 119.38, 119.46, 119.47, 119.52, 119.53, 119.54 and 119.55.

28. Jamaica accepts, as being in the process of implementation:

- Recommendations 119.22 to 119.37, 119.39 to 119.45, 119.48 to 119.51, 119.56, 119.57 to 119.62;

- Recommendation 120.24. *Street children* are properly classified by the *Child Care and Protection Act* as being in need of care and protection. Where these situations are identified, the agencies of the State collaborate to investigate, intervene and integrate children with their families. Depending on the circumstances, a series of programmes offered under Jamaica's social protection system are matched with individual needs and applied accordingly. Where re-integration is not possible or other vulnerabilities are identified, the matter is brought to the attention of the Courts and the child placed in the care of the State.

  Several ongoing initiatives, involving multiple agencies and bilateral and multilateral partners, provide services to street children and data-collection for Government agencies to strengthen the response framework.

29. Jamaica notes:

- Recommendation 121.52. As stated previously, no country can *guarantee* that gender-based violence will be reported; however Jamaica continues to employ measures to encourage reporting;

- Recommendation 121.55. Jamaica accepts this recommendation in principle, but emphasises that these measures have already been implemented, many of which were detailed in Jamaica's national report that was submitted to the UPR Working Group (A/HRC/WG.6/22/1). Our interpretation of 'sex trafficking' in the context of this recommendation is, *human trafficking of minors for the purpose of sexual exploitation*;

- Recommendation 121.56. As stated previously, Jamaica has measures in place to combat discrimination of persons, including those living with HIV/AIDS. All citizens have equal access to HIV/AIDS medicines.

30. Jamaica does not accept:

- The second half of recommendation 120.22 relating to the *decriminalisation of abortion*. In Jamaica, abortion is permissible on medical grounds;

- Recommendation 120.23. The *Sexual Offences Act* as it currently stands establishes marital rape as an offence. However, the Act makes provision for circumstances that must exist for marital rape to have been committed. Proposals have been made for the law to avoid restrictive conditions for marital rape so that all marital rape be criminalized. This matter is currently under review;

- Recommendation 120.25. Jamaica has no provision for "administrative detention", including of foreigners, in its domestic legislation. As previously reported, Jamaica's Refugee Policy is based on the 1951 Convention and 1967 Protocol on Refugees. The institutional framework for dealing with (screening of) refugees includes an Eligibility Committee, a Refugee Review Body, and an appeals Tribunal. Consideration is being given to include, in the Policy, a time-frame to govern the stages from application to granting of refugee status;

- Recommendation 120.26. The existing *Coroner's Act* gives the Coroner (or the Special Coroner), the authority to deem someone an interested party in a Coroner's Inquest. Should INDECOM have an interest in a matter before the Coroner's Court, it simply has to indicate this interest to the Coroner;

- Recommendation 121.47. As stated previously, there is no basis for stating that *human rights defenders* are at risk in Jamaica. Full protection is afforded to them as citizens under the law. They are extremely active, openly and boldly engaged in advocacy, and have contributed positively to the development of the Jamaican human rights architecture;

- Recommendations 121.53 and 121.54;
- Recommendations 121.42 to 121.46, 121.48 to 121.51 and 121.57.